

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

PARTYLITE WORLDWIDE INC.¹

Employer

and

Case 13-RC-21220

**TEAMSTERS LOCAL UNION NO. 731,
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held on before a hearing officer of the National Labor Relations Board, herein referred to as the Board, to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.²

I. Issues

Teamsters Local Union No. 731, International Brotherhood of Teamsters, AFL-CIO (herein the “Petitioner”) seeks an election in the following unit: all full-time and part-time material handling operators (“MHOs”), material handling operator receivers (“MHO receivers”), and cycle counters employed by Partylite Worldwide Inc. (herein the “Employer”) at its two Carol Stream, Illinois facilities (the “Tower” facility and the “Carol Court” facility); excluding all other hourly employees.³ The Employer asserts that the petitioned-for unit is inappropriate

¹ The name of the Employer has been corrected to reflect its full legal name.

² Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

³ The specific hourly classifications excluded by the Petitioner are: shippers, pickers, maintenance/maintenance mechanics, combo-set assembly, rack fillers, quality assurance/quality control, office clericals and production

for purposes of collective-bargaining, and contends that the only appropriate unit in this case is a wall-to-wall unit comprised of all non-exempt hourly employees⁴ employed at the two Carol Stream facilities and at its third North American facility in Batavia, Illinois.⁵ The Petitioner contends that the MHOs, receivers, and cycle counters at the Employer's Carol Court and Tower facilities have a sufficient community of interest apart from the Employer's other hourly classifications as to constitute an appropriate separate unit.

II. Decision

For the reasons discussed in detail below, I find that the MHOs, MHO receivers, and cycle counters do not have a sufficient community of interest apart from the Employer's other hourly classifications as to constitute an appropriate separate unit. Rather, based upon my community of interest analysis, I find that the broader wall-to-wall unit of all hourly employees employed by the Employer at its two Carol Stream facilities is an appropriate unit herein. Based on this finding,

IT IS HEREBY ORDERED that an election be conducted under the direction of the Regional Director for Region 13 at a time and place to be set forth in a subsequently issued notice of election in the following bargaining unit:

All full-time and part-time non-exempt hourly employees of Partylite Worldwide Inc., including: master maintenance technician; senior maintenance mechanic; network technician lead; maintenance mechanic; network technician; executive assistant; maintenance mechanic trainee; computer operator; MHO lead; administrative assistant; HR coordinator; accounting associate; distribution lead; quality assurance lead; receiver, materials/cycle count lead; MHO; production plan coordinator; payroll clerk; logistics coordinator; battery change technician; cycle counter; rack filler; machine operator; quality assurance technician; package handler; order fulfiller; distribution trainer; production clerk; production planner; and receptionist employed by the Employer at its facilities currently located at 437 Tower Blvd. and 882 Carol Court, Carol Stream, Illinois; but excluding sales and other employees, guards, professional employees and supervisors as defined in the Act.

employees. In addition, the Petitioner seeks to exclude sales employees, guards, and managerial and professional employees as defined in the Act.

⁴ The non-exempt hourly classifications employed by the Employer are: master maintenance technician; senior maintenance mechanic; network technician lead; maintenance mechanic; network technician; executive assistant; maintenance mechanic trainee; computer operator; MHO lead; administrative assistant; HR coordinator; accounting associate; distribution lead; quality assurance lead; receiver, materials/cycle count lead; MHO; production plan coordinator; payroll clerk; logistics coordinator; battery change technician; cycle counter; rack filler; machine operator; quality assurance technician; package handler; order fulfiller; distribution trainer; production clerk; production planner; and receptionist.

⁵ It is undisputed that the Employer operates three North American facilities (all of which are in the Chicagoland area): Carol Stream Court, Carol Stream Tower, and Batavia.

The unit consists of approximately 370 employees for whom no history of collective bargaining exists.

III. Statement of Facts

The Employer is engaged in the direct sales of candles and candle accessories. As described in footnote 5, *infra*, the Employer operates three distribution facilities in the greater Chicagoland area (collectively known as “North American Distribution”). The Tower facility is approximately 500,000 square feet, 350,000 of which are used solely for warehousing the Employer’s products.⁶ The remaining 150,000 square feet in the Tower facility are used for picking, packing and shipping orders to the Employer’s customers.⁷ The Carol Court facility is approximately 135,000 square feet and is a seasonal picking and packing operation. When the Employer’s product orders spike during holiday seasons, the Employer uses the Carol Court facility (in addition to the Tower facility) to process the excess candle and candle accessory orders. The Batavia facility⁸ is approximately 200,000 square feet and is used for overflow storage. At these three facilities, the Employer employs approximately 380 non-exempt hourly employees. The record evidence does not disclose how many of these employees work at each facility. However, the record evidence does disclose that there are 70 MHOs, 5 MHO receivers, and 6 cycle counters in total. In addition, there are 6 MHO leads and 1 cycle counter lead.⁹ The Employer operates two shifts.

The Petitioned-For Classifications

(A) MHOs

The MHOs operate four types of equipment in order to load and unload product from warehouse locations in the Employer’s three facilities: turret trucks, forklifts, order pickers and “walkies.”¹⁰ These employees receive mandatory in-house training from the Employer so that they are OSHA certified to operate each of the four types of equipment they use on a daily basis. All MHOs are required to be recertified on all equipment every 12 months. The Employer also trains “back-up MHOs,” who receive training and certification on one or more of the four pieces of equipment described above. These back-up MHOs, who are employees in other hourly classifications and/or temporary employees¹¹, are used seasonally when the Employer’s orders are excessive. Most MHO positions are filled from within the Employer’s other hourly classifications, especially those who have been trained by the Employer as the back-up MHOs.

(B) MHO Receivers

Simply stated, the MHO receivers receive the 400-plus containers of product received by the Employer at its facilities. The MHO receivers use handheld computers to record the received

⁶ This warehousing space in the Tower facility is designated by the Employer as “Tower 1.”

⁷ This distribution area in the Tower facility is designated by the Employer as “Tower 2” or “Yellow Zone Storage and Distribution.”

⁸ The record evidence does not disclose a specific address for the Batavia facility.

⁹ The parties stipulated at hearing that the “lead” classifications are not supervisory under the Act.

¹⁰ Walkies are trucks in which the MHOs stand so they can shuttle the stock at floor level throughout the Employer’s facilities. These walkies do not have the lift capabilities of forklifts.

¹¹ The Employer employs temporary employees in many of the hourly classifications from a temporary labor agency called ADECO. Both parties agree that ADECO is not a joint employer with the Employer in this matter.

items before they are transported throughout the facilities by the MHOs. All MHO receivers must be certified MHOs. The MHO training and additional computer training is provided for MHO receivers on the job by the Employer.

(C) Cycle Counters

The cycle counters keep an accurate accounting of the inventory in the Employer's facilities. They travel throughout the various departments and compare the actual inventory in the facilities to their computerized records of the inventory. According to Joe Salierno, Vice President of North American Distribution, the cycle counters maintain "the integrity of the inventory." Cycle counter positions are filled almost exclusively from within the Employer's other hourly classifications.

The record establishes that there are varying degrees of common supervision among the three petitioned-for classifications. On the first shift, Abdiquani Mohammed, Receiving Supervisor, directly supervises approximately 30-40 MHOs and MHO receivers in Tower 1 and in the Batavia facility; and Joe Massey, Warehouse Supervisor, directly supervises approximately 15 MHOs and MHO receivers in Tower 2. On the second shift, Frank Zaballa, Receiving Supervisor, directly supervises approximately 40 MHOs and MHO receivers in Tower 1, and Warehouse Supervisor Patrick Dean directly supervises approximately 15 MHOs and MHO receivers in Tower 2. On both shifts, Tarryl Williamson, Materials Planner, directly supervises approximately 10 cycle counters.¹² Mohammed, Massey and Sarbekian all report to first shift Warehouse Manager Chaz Brimie. Brimie's primary responsibility is to manage the MHOs, MHO receivers, and cycle counters. The second shift supervisors for all hourly classifications, including Zaballa and Dean, report to second shift Operations Manager Steven Cullen. Cullen is the only manager who works on the second shift. Brimie and Cullen report to Mark Pennybacker, Director of Operations of North American Distribution. Pennybacker is the manager over all hourly classifications.

First shift MHO receiver Celia Hernandez testified that it is Mohammed who gives her direction/supervision, and that the only other supervisor who ever gives her instruction is Sarbekian. First shift (Tower 1) MHO, Otilio Velasquez, testified that only Mohammed or his lead MHO ever gives him direction. Another first shift (Tower 2) MHO, Mario Garcia, testified that only Massey ever gives him direction.

Terms and Conditions of Employment

Record evidence shows that there are several terms and conditions of employment shared by all hourly classifications. All hourly employees in North American Distribution are part of the same overall wage structure. For example, the MHO receivers are classified by the Employer as a wage category 7, which means that they are paid in the same wage range as the distribution lead, quality assurance lead, and cycle count lead classifications. The MHOs are classified by the Employer as a wage category 6, which means that they are paid in the same wage range as the production plan coordinator, payroll clerk, and logistics coordinator classifications. The cycle counters are classified by the Employer as a wage category 5, which

¹² Human Resources Manager of North American Distribution Richard Schulz testified that second shift supervisor Zaballa supervises the cycle counters in Williamson's absence on second shift.

means that they are paid in the same wage range as the battery change technician, rack filler, machine operator, quality assurance technician, and package handler classifications. Wage increases for all hourly classifications are given annually on the employee anniversary date and are based on individual performance (though Salierno testified that general wage increases for all hourly classifications have been made in the past).

Further, all hourly employees (as well as all supervisors and managers) receive the same benefits, from vacation days to health insurance to disability insurance. Similarly, the employee handbook applies equally to all hourly employees. In addition, all hourly employees are permitted to eat in either of the Employer's two lunchroom facilities.

There is one term and condition of employment not shared by all hourly employees. As referenced above, the MHOs and MHO receivers receive specialized training so that they may safely operate the forklifts and other pieces of equipment necessary to perform the MHO job functions. The vast majority of other hourly employees do not operate machinery and therefore do not receive this training. However, the record establishes that the cycle counters do operate one type of equipment (cherry pickers) for which they receive specialized, separate training. In addition, one other group of hourly employees, set assembly, receives training and certification for the operation of forklifts.¹³ The evidence shows that only 1-2 set assembly receive this training and certification because there is a limited need for product to be moved in the set assemble area. Set assembly employees are directly supervised by Set Assembly Supervisor Jeanette Saeli, who in turn reports to Distribution Manager Jim Christensen. Further, the other hourly employees who serve as back-up MHOs receive the same yearly specialized training as the MHOs.

Classification Interaction and Interchange

A majority of the time, each of the three petitioned-for classifications operate independently from each other. MHO Otilio Velasquez testified that he does not interact with the cycle counters at all since they perform "a totally different job." Velasquez also testified that he does have some interaction with the MHO receivers in that the receivers tell the MHOs how much and what type of product to put onto the pallets. However, MHO Garcia testified that he never interacts with the cycle counters or with the MHO receivers.

The record evidence shows that the three petitioned-for classifications have limited interaction with some of the remaining hourly classifications. MHO receiver Hernandez testified that the package handlers put stock onto her pallets on a daily basis and that she fills out daily paperwork required by the quality assurance employees. In addition, Hernandez testified that she occasionally works in the office and for the logistics coordinator. Similarly, MHO Garcia testified that once per week, he works with the machine operators for his entire shift.

The record evidence shows that MHOs rarely do any work outside their own classification. Salierno testified that MHOs will do unloading¹⁴ on occasion if their own work is slow, but that this is not the typical function of the MHOs. In addition, Salierno testified that

¹³ This forklift training and certification for set assembly is the same as for MHOs.

¹⁴ The unloading work is done by the package handling classification.

generally one or two days per year (although not at all in some years), the MHOs do set assembly. Similarly, the evidence establishes that the MHO receivers as well as the cycle counters rarely perform any work but their own. MHO receiver Velasquez testified that in the one year she has been a receiver, he has only performed receiving work.

The parties do not dispute that there have been many transfers among hourly classifications (temporary and permanent). The evidence shows that of the 90 employees in the three petitioned-for classifications, 58 started their employment with the Employer in classifications other than those petitioned for. Further, 13 of these 90 employees have moved either temporarily or permanently from the three petitioned-for classifications into other hourly classifications. The evidence establishes that transfers within North American Distribution are determined by overall Employer seniority, not departmental seniority, as well as by qualifications.

IV. Analysis

Section 9(b) of the Act grants discretion to the Board to “decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this subchapter, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.” 29 U.S.C. § 159(b). The Board’s procedure for determining an appropriate unit is to first examine the petitioned-for unit. See, e.g., *Boeing Company*, 337 NLRB 152, 153 (2001); *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000). If the petitioned-for unit is appropriate, then the inquiry ends; if the petitioned for unit is not appropriate, the Board may examine alternative units suggested by the parties or select an appropriate unit different from those proposals. *Id.* It is well settled that the unit need only be an appropriate unit, not the most appropriate unit. *Id.*; see also *Phoenix Resort Corp.*, 308 NLRB 826, 827 (1992). A unit is appropriate where employees in the unit have a separate community of interest from other job classifications; in determining this community of interest, the Board examines such factors as wages, hours and working conditions, commonality of supervision, degree of skill and common functions, frequency of contact and interchange with other employees, and functional integration. *Boeing Co.*, 337 NLRB at 153.

Upon the record evidence in this case, I find that the petitioned-for unit does not constitute an appropriate unit for the purposes of collective bargaining. The MHOs, MHO receivers and cycle counters do not possess a separate community of interest apart from the Employer’s other hourly classifications. Even among the three petitioned-for classifications, there is no uniform direct supervision. Some of the MHOs and MHO receivers share a common supervisor in one of the Employer’s buildings, but others have a different supervisor in another building, and the cycle counters have an altogether different supervisor. Although the MHOs and receivers receive special training on equipment, this factor is not determinative because certain employees in set assembly receive the same training, and the cycle counters receive separate and different training on different equipment. Furthermore, the back-up MHOs receive exactly the same training as the MHOs, and the record evidence shows that this training has proved to be a conduit to advancement for employees in several of the remaining hourly classifications. On balance, the evidence shows that the equipment training is actually offered to and completed by employees in many of the hourly classifications.

The three petitioned-for classifications do not enjoy different wage scales or benefits from the remaining hourly classifications. To the contrary, all hourly employees receive exactly the same benefits and are compensated on the same wage scale as described above. Further, the MHOs, MHO receivers and cycle counters do not interchange or interact with any frequency so as to set them apart from the rest of the hourly employees. Rather, the evidence shows that the petitioned-for classifications interact among themselves as often or as seldom as they interact with the remaining hourly classifications.

In sum, aside from some training, the record evidence simply does not establish that these three classifications share a sufficient community of interest apart from the other hourly classifications to warrant finding them an appropriate unit. Moreover, although Petitioner relies on the fact that “it is the wish of the petitioned-for bargaining unit that this unit be carved out and set as petitioned for,” by virtue of Section 9(c)(5) of the Act, such factor does not provide “a proper basis, absent other supportive factors, for finding the requested units to be appropriate.” *Indiana Bell Telephone Co.*, 229 NLRB 187, 188 (1977). Accordingly, I cannot find that the petitioned-for unit is appropriate for collective bargaining in this matter. *Boeing Co.*, *supra*.

Having found the petitioned-for unit to be inappropriate for the purposes of collective bargaining, I must examine the alternative wall-to-wall unit proposed by the Employer. In so doing, I find that all hourly classifications in North American Distribution share common wages, benefits and working conditions, as well as common upper-level management. Further, I find that, with the exception of some specialized training, all classifications have similar degrees of skill and on-the-job training. I also find that, while daily contact among different classifications is limited, there has been a great degree of temporary and permanent interchange among many of the hourly classifications. These commonalities show that the all hourly classifications share a community of interest as mandated by Board law. *Id.*

Having determined the composition of the unit, I now turn to the question of the unit’s scope. The Employer contends that it is inappropriate to exclude the employees at its Batavia location from the bargaining unit. However, the record does not support this contention. While it is clear that employees at the Batavia location have similar terms and conditions of employment and the same overall supervision, other factors militate against combining employees from Batavia in a unit with Carol Stream employees. Thus, there is no evidence that employees at the Batavia facility have any interaction or interchange with the Carol Stream employees. See *J&L Plate*, 310 NLRB 429 (1993); *Gray Drug Stores*, 197 NLRB 924 (1972). I take judicial notice that the towns of Batavia and Carol Stream are located approximately 14.5 miles apart. See *New Britain Transportation*, 330 NLRB 397 (1999) (locations between 6 and 12 miles apart not appropriately included in petitioned-for unit); *Dixie Bell Mills*, 139 NLRB 629, 632 (1962) (20 miles distance supports finding of separate unit). There is no history of bargaining for all three locations, and no union seeks to represent employees in this larger unit. *New Britain Transportation Co.*, 330 NLRB at 398; *J&L Plate*, *supra*.

As I have found that a wall-to-wall unit limited to the two Carol Stream locations is an appropriate unit for the purposes of collective bargaining, I hereby direct an election in that unit.¹⁵

V. Direction of Election

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are those in the unit(s) who were employed for 30 days or more within the 12 months preceding the eligibility date for the election, or if they have had some employment in those 12 months and have been employed for 45 days or more within the 24-month period immediately preceding the eligibility date. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the Teamsters Local Union No. 731, International Brotherhood of Teamsters, AFL-CIO.

VI. Notices of Election

Please be advised that the Board has adopted a rule requiring election notices to be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An employer shall be deemed to have received copies of the election notices unless it notifies the Regional Office at least five working days prior to 12:01a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the

¹⁵ As I have directed an election in a unit larger than that sought by the Petitioner, the Petitioner is hereby given 14 days to submit the additional showing of interest. These 14 days will be counted from the date of this decision or, if applicable, from the date the Board denies any request for review of the unit scope findings in this decision. In the alternative, the Petitioner may withdraw its petition without prejudice upon written notice to me within 10 days from the date of this decision or, if applicable, from the date the Board denies any request for review of the unit scope findings in this decision.

Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VII. List of Voters

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). The Regional Director shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 13's Office, Suite 800, 200 West Adams Street, Chicago, Illinois, 60606 on or before July 21, 2004. No extension of time to file this list will be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VIII. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20005-3419. This request must be received by the Board in Washington by **July 29, 2004**.

DATED at Chicago, Illinois this 15th day of July, 2004.

Roberto G. Chavarry
Regional Director
National Labor Relations Board
Region 13
200 West Adams Street, Suite 800
Chicago, Illinois 60606

CATS — Unit – Other Scope/Definition

401-7500; 420-2900; 420-4600; 420-5000

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